

1 BILL LOCKYER, Attorney General
of the State of California
2 BENETH ANDERSON BROWNE, State Bar No. 202679
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 1702
4 Los Angeles, California 90013
Telephone: (213) 897-7816
5 Facsimile: (213) 897-9395
6 Attorneys for Complainant

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8 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 1D-2005-64145

11 **ROBERT ANDREW FOLSOM**
11208 Birch Haven Avenue
12 Bakersfield, California 93312

A C C U S A T I O N

13 Physical Therapist License No. PT 6484,
14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Steven K. Hartzell (Complainant) brings this Accusation solely in his
19 official capacity as the Executive Officer of the Physical Therapy Board of California (Board).

20 2. On August 23, 1973, the Board issued License Number PT 6484 to Robert
21 Andrew Folsom (Respondent). This license was in full force and effect at all times relevant to
22 the charges brought in this accusation and will expire on March 31, 2006, unless renewed. There
23 is no record of prior disciplinary action against this license.

24 **JURISDICTION**

25 3. The Board brings this Accusation under the authority of the following
26 sections of the Business and Professions Code ("Code").

27 4. Section 2609 of the Code states:
28 "The Board shall issue, suspend, and revoke licenses and approvals to practice

1 physical therapy as provided in this chapter.”

2 5. Section 2660 of the Code provides, in pertinent part:

3 “The board may, after the conduct of appropriate proceedings under the
4 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose
5 probationary conditions upon any license, certificate, or approval issued under this chapter for
6 unprofessional conduct that includes, but is not limited to, one or any combination of the
7 following causes:

8 . . .

9 “(d) Conviction of a crime which substantially relates to the
10 qualifications, functions, or duties of a physical therapist or physical therapy
11 assistant. The record of conviction or a certified copy thereof shall be conclusive
12 evidence of that conviction.”

13 6. Section 2661 of the Code states:

14 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
15 made to a charge of a felony or of any offense which substantially relates to the qualifications,
16 functions, or duties of a physical therapist is deemed to be a conviction within the meaning of
17 this article. The board may order the license suspended or revoked, or may decline to issue a
18 license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed
19 on appeal or when an order granting probation is made suspending the imposition of sentence,
20 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person
21 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
22 of guilty, or dismissing the accusation, information, or indictment.”

23 7. Title 16, California Code of Regulations, section 1399.20 provides, in
24 pertinent part, that a crime shall be considered to be substantially related to the qualifications,
25 functions or duties of a person holding a license under the Physical Therapy Practice Act if “to a
26 substantial degree it evidences present or potential unfitness of a person to perform the functions
27 authorized by the license in a manner consistent with the public health, safety or welfare.”

28 8. Section 2661.5 of the Code states:

1 “(a) In any order issued in resolution of a disciplinary proceeding before
2 the board, the board may request the administrative law judge to direct any
3 licensee found guilty of unprofessional conduct to pay to the board a sum not to
4 exceed the actual and reasonable costs of the investigation and prosecution of the
5 case.

6 “(b) The costs to be assessed shall be fixed by the administrative law
7 judge and shall not in any event be increased by the board. When the board does
8 not adopt a proposed decision and remands the case to an administrative law
9 judge, the administrative law judge shall not increase the amount of the assessed
10 costs specified in the proposed decision.

11 “(c) When the payment directed in an order for payment of costs is not
12 made by the licensee, the board may enforce the order of payment by bringing an
13 action in any appropriate court. This right of enforcement shall be in addition to
14 any other rights the board may have as to any licensee directed to pay costs.

15 “(d) In any judicial action for the recovery of costs, proof of the board's
16 decision shall be conclusive proof of the validity of the order of payment and the
17 terms for payment.

18 “(e) (1) Except as provided in paragraph (2), the board shall not renew or
19 reinstate the license or approval of any person who has failed to pay all of the
20 costs ordered under this section.

21 “(2) Notwithstanding paragraph (1), the board may, in its discretion,
22 conditionally renew or reinstate for a maximum of one year the license or
23 approval of any person who demonstrates financial hardship and who enters into a
24 formal agreement with the board to reimburse the board within that one year
25 period for those unpaid costs.

26 “(f) All costs recovered under this section shall be deposited in the
27 Physical Therapy Fund as a reimbursement in either the fiscal year in which the
28 costs are actually recovered or the previous fiscal year, as the board may direct.”

1 9. Section 125.3 of the Code provides, in pertinent part, that the Board may
2 request the administrative law judge to direct a licensee found to have committed a violation or
3 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
4 and enforcement of the case.

5 **FIRST CAUSE FOR DISCIPLINE**

6 (Conviction of Crime)

7 10. Respondent is subject to disciplinary action under section 2660, subsection
8 (d), and section 2661 in that he was convicted of a crime substantially related to the
9 qualifications, functions or duties of a physical therapist, to wit: driving with a blood alcohol
10 level of 0.08% or more. The circumstances are as follows:

11 A. On December 18, 2004 at approximately 12:05 a.m., respondent
12 was observed driving erratically in Bakersfield, California. He was stopped by a
13 Kern County Sheriff's deputy and subjected to field sobriety tests by a California
14 Highway Patrol officer. Two breathalyzer tests indicated that respondent's blood
15 alcohol level was .17%. He was subsequently arrested and charged with
16 misdemeanor driving under the influence and misdemeanor driving with a blood
17 alcohol level of 0.08% or more.

18 B. On January 28, 2005, in the case entitled *People v. Robert Andrew*
19 *Folsom*, Case No. BM667679A, the Kern County Superior Court dismissed the
20 driving under the influence charge and respondent entered a plea of nolo
21 contendere to driving with a blood alcohol level of 0.08% or more, in violation of
22 Vehicle Code section _____. Respondent was placed on probation for three
23 years, ordered to pay a fine of \$1,690, and ordered to comply with various terms
24 of probation including participation in a licensed alcohol education program for 3
25 months or longer.

26 11. Respondent's conduct, as set forth above, constitutes unprofessional
27 conduct and respondent's license is subject to discipline pursuant to the aforementioned
28 provisions of the Business and Professions Code in that respondent was convicted of a crime

1 substantially related to the qualifications, functions or duties of a physical therapist.

2 **PRAYER**

3 **WHEREFORE**, Complainant requests that a hearing be held on the matters
4 herein alleged, and that following the hearing, the Physical Therapy Board of California issue a
5 decision:

6 1. Revoking or suspending Physical Therapist License Number PT 6484,
7 issued to Robert Andrew Folsom;

8 2. Ordering Robert Andrew Folsom to pay the Physical Therapy Board of
9 California the reasonable costs of the investigation and enforcement of this case, pursuant to
10 Business and Professions Code section 2661.3;

11 3. Taking such other and further action as deemed necessary and proper.

12 DATED: October 25, 2005.

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15 Original Signed By:
16 STEVEN K. HARTZELL
17 Executive Officer
18 Physical Therapy Board of California
19 Department of Consumer Affairs
20 State of California
21 Complainant

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